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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,659	02/12/2002	Brian Yolles	36861-00002	6313
27171	7590	11/25/2008	EXAMINER	
MILBANK, TWEED, HADLEY & MCCLOY			TINKLER, MURIEL S	
1 CHASE MANHATTAN PLAZA				
NEW YORK, NY 10005-1413			ART UNIT	PAPER NUMBER
			3691	
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			11/25/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/074,659	YOLLES, BRIAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	MURIEL TINKLER	3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 January 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) \_\_\_\_\_ is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-29 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

This application has been reviewed. Claims 1, 28 and 29 have been amended. Claims 30-52 have been cancelled. Claims 1-29 are pending. The rejection(s) are as follows.

### ***Response to Amendment***

1. The Examiner has reviewed the amendments to claims 1, 28 and 29. The Examiner has accepted the amendment of, "at least three holders of investment instruments". However, the Examiner has not found any evidence in the specification that substantiates the invention of the newly amended language, "wherein the investment instruments of an individual holder are the same, while at the same time the investment instruments of each holder are diverse with respect to the investment instruments of other holders". The Applicant cites pages 10-11. The Examiner has reviewed these pages, which discuss a single company buying multiple shares of each DJIA security for each trading day. This does not correlate with the Applicant's claim that a company/person/user buys only one type of stock/security and other companies/persons/users each by a single type of stock/security. Therefore, the portion of the amendment concerning and individual holder's stocks are the same but diverse with respect to other holders who each has a single type of stock will be rejected based on 35 USC 112, 1st paragraph as shown below.

***Response to Arguments***

2. Applicant's arguments filed September 3, 2008 have been fully considered but they are not persuasive. The Applicant has made amendments to independent claims 1, 28 and 29. The Applicant argues that the Lange reference does not disclose the newly added limitations in amendments to claims 1, 28 and 29. Specifically, Lange: does not discloses a plurality of holders; discusses only binary options; and, does not discuss instruments of the holders are the same, while at the same time different from the instruments of the other holders. The examiner disagrees.
3. Lange discloses a plurality of holders/traders in paragraph 234, "the ability to provide diversification of credit risk among **all the traders**."
4. Lange does not limit its discussion to binary options. In fact, binary/digital options are only discussed in section seven of Lange (pages 71-80 or more specifically, paragraphs 869-1014), which was not cited by the Examiner during the last Office Action mailed on March 21, 2008. Lange discloses more than one possible outcome in paragraph 33, "The claims are contingent in that their payout or return depends on the outcome of an observable event with more than one possible outcome."
5. The Applicant cites page 15, lines 6-10 in providing support for the newly added amendments, "instruments of the holders are the same, while at the same time different from the instruments of the other holders". The Examiner has reviewed this section which discloses one step in a 10/11 step process. In this step (step 10), the invention attempts to eliminate an amount of loss as 'unqualified'. Specifically, it shows a JPMorgan Chase security with the lowest percentage loss. This security is marked as

'unqualified', with a 1.72 percent loss. Other clients may deduct 1.72 percent from their sustained loss percentage to ensure equitable treatments. Furthermore, if JPMorgan Chase is the only security eliminated than all other clients with losses would deduct 1.72 percent from their sustained loss. In addition, this section of the specification discloses that multiple clients have purchased JPMorgan Chase on page 15, lines 6-7, "if the loss sustained by **clients** who purchased JP Morgan Chase security class..."

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-5, 7, 8 and 11-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Lange (US 2002/0147670 A1).
8. Re Claim 1, Lange discloses: identifying a plurality of holders of investment instruments in figure 4 (element 267) and paragraph 234; investment instruments of each holder are diverse with respect to that of other holders in figure 4 (element 266) and paragraphs 89 and 234; sharing risk in paragraph 46; reflecting diverse industry sectors is noted to be well known in the art in figure 4 (element 263) and paragraph 236; aggregating premiums (at least partially by the holders) to form a loss reduction fund

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(hedge fund) and determining losses incurred by holders in paragraph 27and 34; determining which of a plurality of holders incurred a loss in the respective investment instruments at a predetermine time wherein some holders incur a loss (may be different values) and others do not in paragraph 12 (some lose, others win); reimbursing at least a portion of the losses in the Abstract and paragraphs 1-5; and, where some holders may be reimbursed and other holders may not in paragraph 37 (some get reimbursed while other pay).

9. Re Claims 2 and 4, Lange discloses that the reimbursements are from a loss reduction fund and the premiums are determined as a percentage of the investment price in paragraphs 5-7.

10. Re Claim 3, Lange discloses that the reimbursements are from a fund other than the loss reduction fund in paragraph 8.

11. Re Claim 5, Lange discloses that the investment instrument price is a current trading price at the time the premiums are aggregated in paragraph 2.

12. Re Claim 7, Lange discloses that the investments instruments can be within the same category (or group) in paragraph 44.

13. Re Claim 8, Lange discloses that the investment categories include risk in paragraph 292.

14. Re Claims 11 and 12, Lange discloses that none of the plurality of holders are reimbursed for a loss that is less than the threshold loss and that the portion of the loss that is reimbursed begins at the threshold loss in paragraphs 8-12, 547 and claim 127.

15. Re Claim 13, Lange discloses that the threshold loss is a percentage value in paragraphs 41, 43, 297, 328, and 335.

16. Re Claim 14, Lange discloses that the threshold loss is a dollar value in paragraph 547.

17. Re Claims 15 and 16, Lange discloses that all of the plurality of holders are reimbursed for a loss that is less than the threshold loss and none are reimbursed if the loss is greater than the threshold loss in paragraphs 33, 965 and 983.

18. Re Claim 17, see the rejection of claims 15 and 13 above.

19. Re Claim 18, see the rejection of claims 15 and 14 above.

20. Re Claim 19, Lange discloses that the plurality of holders experiencing the largest percentage of loss receive the largest percentage of loss reimbursement in the Abstract. See also the rejection of claim 13 above.

21. Re Claim 20, see the rejection of claim 13 above.

22. Re Claim 21, Lange discloses creating a pool of a plurality of loss reduction funds in paragraphs 34 and 1044-1048.

23. Re Claim 22, Lange discloses reimbursement to the holder from the pool in paragraphs 36 and 506.

24. Re Claim 23, see the rejection of claim 3 above.

25. Re Claim 24, Lange discloses various time frames for different loss reduction funds in paragraph 110.

26. Re Claim 25, see the rejection of claim 22 above.

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27. Re Claim 26, Lange discloses allocating risk through risk capital allocation (the use of insurance to cover the loss not covered by the fund) in paragraphs 26 and 29.
28. Re Claim 27, Lange discloses redistributing profit in paragraph 1392.
29. Re Claim 28, see the rejection of claims 1, 4, 5, and 17 above.
30. Re Claim 29, see the rejection of claims 1, 4, 5, and 13 above.

***Claim Rejections - 35 USC § 103***

31. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

30. Claims 6, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange in view of Champion (US 5,126,936 A).

31. Re Claim 6, the Applicant discusses that the investment instruments are selected from a group including stocks, bonds, futures, options, derivatives, funds and trusts. Lange discloses that investments, "include (but not limited to) innovations and implementations of futures securities' in the Abstract. Lange also discloses the information in Claim 1. Lange does not specifically disclose each of stocks, bonds, futures, options, derivatives, funds and trusts. Champion teaches the use of each of these in the Background of the Invention section under column 1 (lines 15-49). Therefore it would have been obvious to a person having ordinary skill in the art the

time the invention was made to modify Lange in view of Champion to offer diverse investment choices.

32. Re Claim 9, Lange discloses the information in claim 7. Lange also discloses that the investment categories include a form of diversification in paragraph 6. Lange does not specifically disclose the use of the word beta. Champion teaches that the investment categories include beta in the column 2 (lines 12-28). Therefore it would have been obvious to a person having ordinary skill in the art the time the invention was made to modify Lange in view of Champion to include investment diversification to limit the impact of the business cycle on stock choices.

33. Re Claim 10, Lange discloses the information in claim 7. Lange does not specifically disclose the use of SIC, NAICS, securities indexes and HOOVERS. Champion teaches the use of these in the Abstract, and the Summary of the Invention under column 3 (lines 29-49). Therefore it would have been obvious to a person having ordinary skill in the art the time the invention was made to modify Lange in view of Champion to include various investment categories to offer a broad collection of separate funds directed to the diverse investment choices.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MURIEL TINKLER whose telephone number is (571)272-7976. The examiner can normally be reached on Monday through Friday from 6:30 AM until 3 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571)272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. T./  
Examiner, Art Unit 3691

/Hani M. Kazimi/  
Primary Examiner, Art Unit 3691